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UNITED STATES CIVIL SERVICE COMMISSION
Office of the Executive Director
Interagency Advisory Group
1900 E Street, N.W.
Washington, D.C. 20415

Minutes of the IAG Committee on Adverse Actions and Appeals

October 20, 1978

The meeting was chaired by Wilma Lehman of CSC's Policy Analysis and Development Division, who led the discussion of several issue papers on workforce discipline, prepared for the Program Development Conference in Ocean City, Maryland. She noted that the papers had been prepared by members of an interagency group working in the discipline area.

In regard to provisions of the Civil Service Reform Act covered in one of the papers, Mrs. Lehman noted that the requirements for job standards must be fully implemented by 1981 but that many agencies will have done so before that time. In the meantime, OPM will have to regulate the taking of adverse actions when the agency's current performance appraisal system does not conform to the new requirements of law. OPM must evaluate any current or new appraisal systems to see that they do meet the new requirements.

In the area of actions taken for misconduct, problems may arise because of the change in the definition of a short suspension from 30 days or less to 14 days or less, since adverse actions involving emergency situations may require that the employee be kept off the premises during the 30 day notice period. Currently, a short suspension lasting 30 days is used to accomplish this, with the employee put on administrative leave for up to five days while the suspension is being processed. Some way will have to be found to deal with such problems, perhaps the use of a longer period of administrative leave.

The question of cases which involve elements of both unacceptable performance and misconduct arose. It was felt that the greater procedures should be used if both elements were involved in the reasons for taking the action. A member asked what should be done in these cases if an agency is covered by chapter 75 but not chapter 43 of title 5. Again, it was felt that it would probably be safer to follow the provisions of chapter 75.

-2-

Mrs. Lehman discussed the question of substantial evidence as against preponderance of the evidence, noting that substantial evidence was generally considered to be a lesser degree of evidence than preponderance. It was the intent of the Congress to lessen the standard of review in actions taken for unacceptable performance.

In general, members believed that the requirement that the decision to take an adverse action be made by a higher level official should be dropped since it is not required by the Act except for actions taken under chapter 43 for unacceptable performance. In addition, one suggested that provisions for disallowing a representative be placed in part 752 as they are currently in parts 771 and 772.

Several members have agreed to work with the Commission drafting regulations and instructional material implementing the Reform Act provisions concerning adverse actions both for unacceptable performance and for misconduct and other nonperformance-related reasons, and administrative grievance systems.